

# St. John's Bayou-New Madrid Floodway: Where have we been? Where are we going?

By Liz Anderson

The St. Johns Bayou-New Madrid Floodway flood control project will soon be before the Missouri Clean Water Commission for consideration of an appeal of the Department of Natural Resources' denial of Water Quality Certification.

We thought this would be a good time to review the last half of 2002 and look forward into 2003 with the project.

Where have we been and where are we going?

The Notice of Completion of the Final Supplemental Environmental Impact Statement (FSEIS) on the St. Johns Bayou-New Madrid Floodway flood control project was printed in the Federal Register on July 19, 2002, and the Corps of Engineers requested Water Quality Certification at that time from the Missouri Department of Natural Resources (DNR).

The DNR had 30 days to issue that permit. August 19.

They requested and received an extension on that deadline, so that they could hold a public hearing in East Prairie, that they set for September 30. Their public comment period ended October 8.

They requested another extension in November, because of a new letter from the local office of the U.S. Fish and Wildlife Service that surfaced late in the DNR's consideration of the Clean Water Certification and the U. S. Army Corps of Engineers granted them until November 18, 2002 to grant or deny the permit.

The Corps answered every point raised in that new -- and very late-appearing letter.

On November 18, the Missouri DNR denied the request for Water Quality Certification, without prejudice, based on two issues: 1. that the Corps' commitment to try to fix hydrology problems at Big Oak Tree State Park was not clear; and 2. that all federal agencies had not agreed to the proposed mitigation for the project.

In the December 12 edition of this newspaper, we reported that the

Corps has appealed that decision to the Clean Water Commission.

Scott Totten, Director of the Water Protection and Soil Conservation Division of the DNR said Friday in a telephone interview, that no hearing date has yet been set, no hearing officer has been appointed, but that they are working with the Corps to decide whether to go to a hearing or go to settlement.

The Clean Water Commission is a state commission composed of Thomas Herrmann, Ballwin, chairman; Davis Minton, Dexter, vice-chairman; and members: Arthur Hegi, Shell Knob; Ms. Kristin Perry, Bowling Green; Ms. Janice Greene, Springfield; and Ms. Cosette Kelly (no city given on the state website).

Their next meeting is in late January, Totten said, he thought January 29, 2003.

At that time, the commission may decide whether to hear the appeal themselves or to proceed with the hearing (trial) before a hearing officer.

Normally, Totten said, the trial is held before a hearing officer, who after the hearing and deliberation, makes recommendations, findings of fact and conclusions of law to the Clean Water Commission.

They then make a decision on the appeal, based on his findings, after hearing brief comments from the attorneys for either side.

But the commission could decide to hear the case themselves.

In either case, testimony will be presented, depositions given, with the DNR represented by the Attorney General's office. The Corps' attorneys will present the case in favor of the St. Johns Project.

The hearing officer is chosen by the Clean Water Commission either from an administrative pool of lawyers, or a pool of private attorneys under contract to the state.

There is no statutory time frame for this appeal process to conclude.

Many times after a trial date has been set, Totten explained, the attorneys ask for delays, especially if they are still talking about things.

He said for instance they are still working with the Corps on the draft Memorandum of Understanding on Big Oak Tree State Park.

The Corps told the DNR that they would put their commitment to Big Oak Tree State Park in the Record of Decision for the project.

Totten said that the Record of Decision is a document that will be signed after the Water Quality Certification is approved, and with that in mind, the Corps has worked up a draft Memorandum of Understanding concerning their commitment to Big Oak Tree State Park.

He indicated they could reach settlement on this issue, but they have to have the Memorandum of Understanding signed before the Water Quality Certification is approved.

The memorandum includes how the Corps proposes to get water to the park, how to buffer farmland from seepage from the park, and how they plan to draw water from the river to mimic historic flooding patterns.

He said it includes an expanded footprint for the park, in order to protect adjacent farmland from seepage.

Overall it is a commitment to work on those things that would restore the historic hydrologic regime to the park.

The memorandum includes putting an outlet through the mainline levee, so that water can drain down and into the park. It can be closed off when necessary.

He said they are making progress with the memorandum. The Corps sent the DNR a draft, they have made additions and there have been discussions back and forth.

He said he would also like to see one other meeting between the various federal agencies involved to see if an agreement could be reached.

He added that the Bush Administration has just issued new guidelines about wetlands, and the DNR will have to look at those to see if they impact on this project at all.

We told Mr. Totten that our "wetlands" are primarily prior converted

farmland, not tupelo swamps.

We advised him that the federal agencies have tried and tried to reach agreement, but the bottom line is that the Fish and Wildlife Service wants to see the land flooded, and local interests want the flooding to stop.

The impasse over the years has come down to that issue: whether or not to flood the land.

He said there are three issues involved in the project from his point of view: and he thinks they can reach

agreement over the first, Big Oak Tree State Park.

He said everyone agrees that they have no problem with the project as it relates to the St. Johns Bayou; that the disagreement is over closing the levee on the floodway side of the basin.

He said the levee closure matters the most and is the most problematic.

We told him that you can't have flooding on the land with the disruption and damage it causes and still

have an overall healthy community or economy. That local people decided long ago that the total project was necessary.

We added that local people have given just as much as they possibly can with changes in gate operations, and all of the other environmental features incorporated into this project..

Totten said the addition of more than 8,000 acres of bottomland hardwood forests to the Bootheel would be a tremendous asset to the region.